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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,033	12/31/2003	Harold Dillingham	20573.020	9233
42922	7590	12/14/2005		
WHITAKER, CHALK, SWINDLE & SAWYER, LLP 3500 CITY CENTER TOWER II 301 COMMERCE STREET FORT WORTH, TX 76102-4186			EXAMINER HARTMANN, GARY S	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/750,033

Applicant(s)

DILLINGHAM, HAROLD

Examiner

Gary Hartmann

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 33 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 15, 33 and 34 is/are rejected.
- 7) ☒ Claim(s) 12-14 and 16-18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6-11, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over King (U.S. Patent 4,695,186) in view of Holtom (U.S. Patent 5,960,710).

King discloses the hopper (13) having a powered dispensing implement (63), hinged door (31, 32) and hydraulic actuating cylinder (44) arranged as claimed. The interlock device/control system is not disclosed. Holtom teaches a hydraulic actuating cylinder (18), door (12) and hopper (11) with an interlock/control system arranged as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the interlock device/control system of Holtom with the hopper of King in order to increase safety, as taught by Holtom.

The powered implement is a rotating screw.

A hydraulic motor (not shown) is disclosed as a driving means for the screw conveyor.

Asphalt mix is taught. Regarding claims 34 and 35, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the materials as claimed in order to suit a particular application.

The hopper body is configured for transport on a truck chassis (Figure 1).

Art Unit: 3671

The doors are bi-fold doors (Figure 2).

Regarding claim 11, the hydraulic cylinder operates in the manner claimed.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over King and Holtom as applied above, and further in view of Dillingham (U.S. Patent 5,988,935).

Dillingham teaches the configuration as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used this configuration in order to dispense materials as needed in a particular application.

Allowable Subject Matter

Claims 12-14 and 16-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed October 11, 2005 have been fully considered but they are not persuasive. Applicant's assertion that the actuator of King appears to be inoperable to close the doors of King is not understood. This is the structure specifically disclosed to activate the doors. It is absurd that one would manufacture a means of activation that could not perform the specified function; therefore, the ability to close the doors is considered to be inherent. Further, while Figure 2 of King is not an engineering drawing, it is clear that in the position shown, the piston could extend to the bottom of the cylinder. It is also clear that there is a pinned

Art Unit: 3671

connection between the cylinder and the wall. Therefore, it is deemed that the piston could extend sufficiently far and in the correct direction to close the doors.

Regarding the arguments directed to Holton, note that this has been used solely as a teaching of use of a safety system on a hopper door, not of an auger or any other structure taught by King. Holton gives clear teaching that would have enabled one skilled in the art to combine the interlock/control system with a different type of hopper, such as that of King. Similarly, it is within ordinary skill to have modified the system of Holton for use with King.

The examiner disagrees that if the combination had been obvious to one skilled in the art that another reference would already teach it because, given these known references, an examiner would be remiss in granting a patent to the subject matter as claimed. In other words, the absence of a 102 reference may simply be attributed to the lack of patentability of the subject matter.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

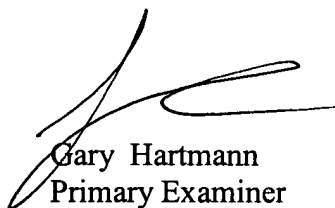
Art Unit: 3671

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 571-272-6989. The examiner can normally be reached on Monday through Thursday, 9am-7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary Hartmann
Primary Examiner
Art Unit 3671

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